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Taxation -- Land Exempt Where No Benefits Received

not. Minor children remain at all times wards of the Court, in custody proceedings.

It appears most inequitable that the mother was not at least granted a more favorable decree, say a three months period of visitation. She is entitled to enjoy her society for a reasonably sufficient time each year to enable her to inculcate in her mind a spirit of love, affection and respect for her mother.[10]

Courts being jealous of their jurisdiction, one wonders if the same result would have been reached had the mother remained domiciled in Florida rather than Michigan. In any event, the decision in the instant case is at variance with the great weight of authority, and cannot be reconciled with earlier Florida cases. It certainly is not in accord with modern social doctrines.

[10] Frazier v. Frazier, 109 Fla. 164, 147 So. 464 (1933). Where evidence showed neither of divorced parents had superior qualifications for exercising parental rights, modifying decree awarding custody of 11 year old female child so as to exclude father except for two weeks each year held erroneous in not permitting father child's custody for not less than three months.

TAXATION—LAND EXEMPT WHERE NO BENEFITS RECEIVED*

The Florida Supreme Court recently held that where agricultural lands included within municipal boundaries receive no benefits, direct or indirect, from the municipality other than from its water works, the enforcement of municipal taxes on the lands other than for debt service on the water works bonds may be enjoined.[1]

The effect of the principal case is that agricultural lands within a municipality are taxable only if, and to the extent that, they receive municipal benefits. This is presumably based on the minority rule that municipal taxation of property which cannot be benefited by municipal expenditures is a taking of private property for public purposes and may be enjoined.[2] In two of the small minority of states recognizing this theory it has been overruled as unsatisfactory and impracticable.[3] As was pointed out in a New Jersey case,[4] "If the matter of benefits to the

* Town of Lake Hamilton v. Hughes, 32 So. 2d 283 (Fla. 1947).

[1] See Note*, supra.

[2] Langworthy v. Dubuque 16 Iowa 271 (1864); Territory v. Daniels 6 Utah 288, 22 Pac. 159, 5 L.R.A. 444 (1889) since overruled see (before constitution adopted) Kimball v. Grantsville City, 19 Utah 368, 398, 57 Pac. 1, 45 L.R.A. 628 (1899); Town of Parkland v. Gaines, Same v. Brown, 88 Ky. 562, 11 SW 649 (1889) since overruled see Hughes v. Carl et. al., 106 Ky. 533, 50 SW 852 (1899); Morford v. Unger, 8 Iowa 82 (1859).

[3] Kimball v. Grantsville City, supra. Hughes v. Carl, supra.

[4] State (Bailey, Prosecutor) v. Brown, Collector, 53 N.J.L. 162, 20 Atl. 772 (1890).

taxpayer becomes a judicial problem the courts cannot halt at the line of no benefit in dealing with general tax levies. The logical result of judicial intervention at all carries the boundary of supervision into all degrees of benefit. . . . Nor can there be any logical distinction between property which the court may think to be inadequately benefited and property which it may deem to be the recipient of no benefit. The supposed wrong to the taxpayer . . . in both instances is identical in kind."

The question of taxability of lands, with the infrequent exception of cases of abuse of legislative authority,[5] is for the legislature rather than for the courts. It has been held that without valid legislative authority no municipality has power to exempt taxable property within its limits from local taxation.[6] The case under consideration seems to be the first in which Florida has departed from the general rule that property within the limits of a municipal corporation is subject to municipal taxation, even though it is so situated that it does not and cannot receive any benefit frim the money so paid as taxes,[7] to the extent of saying that the courts are to be permitted to determine taxability of land where there is no clear abuse of legislative authority.

Reason indicates that Florida should return to the general rule supported by a far greater weight of authority. Thus it would avoid the confusion and impracticability of a judicial determination of a presence or abuse of municipal benefits to unimproved lands.

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5 Land, Log, & Lumber Co. et. al. v. Brown et. al., 73 Wis. 294, 40 NW 482, 3 L.R.A. 472 (1888); Sharp's executor v. Dunavan, 17 B. Mon. 223 (Ky.) (1856); William T. Martin v. William Dix, 52 Miss. 53, 24 Am. Rep. 661 (1876); Davis v. Town of Point Pleasant, 32 W. Va. 289, 9 SE 228 (1889); Kelly v. Pittsburgh, 85 Pa. 170, 27 Am. Rep. 633 (1877); State ex rel. Davis, Attorney General et. al., v. City of Stuart, 97 Fla. 69, 120 So. 335, 64 A.L.R. 1307 (1929); Lintor v. Athens, 53 Ga. 588 (1875).

6 City of Tampa v. Kaunitz, 39 Fla. 683, 23 So. 416 (1898); Hayes v. Walker, 54 Fla. 163, 44 So. 747 (1907).

7 Kimball v. Grantsville City, supra; Callen v. City of Junction City, 43 Kansas 627, 23 Pac. 652, 7 L.R.A. 736 (1890).

TAXATION—MUNICIPAL TAX ASSESSMENTS ENDANGERED*

In a recent action for the foreclosure of certain tax liens, the Supreme Court of Florida reversed a final decree of foreclosure rendered by the Circuit Court of Jefferson County, and ruled that there was no valid levy and assessment of certain municipal taxes by the town of Monti-

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*Certain Lots Upon Which Taxes Are Delinquent et al. v. Town of Monticello, 31 So. 2d 905 (Fla. 1947)—(Decree of Circuit Court affirmed on first hearing; reversed on rehearing).